

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (CGM)

SIPA LIQUIDATION

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Substantively  
Consolidated SIPA Liquidation of Bernard L.  
Madoff Investment Securities LLC and Bernard L.  
Madoff,

Plaintiff,

v.

BANK HAPOALIM B.M. and BANK  
HAPOALIM (SWITZERLAND) LTD.,

Defendants.

Adv. Pro. No. 12-01216 (CGM)

**STIPULATION AND ORDER**

Irving H. Picard (the “Trustee”), as trustee for the substantively consolidated liquidation of Bernard L. Madoff Investment Securities LLC under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa–III, and the estate of Bernard L. Madoff, individually, and defendants Bank

Hapoalim B.M. and Bank Hapoalim (Switzerland) Ltd. (“Defendants”), by and through their respective undersigned counsel, hereby stipulate and agree as follows:

**WHEREAS**, on March 29, 2012, the Trustee commenced the above-captioned adversary proceeding by filing a complaint (the “Complaint”) against Defendants to recover subsequent transfers allegedly received from Fairfield Sentry Limited (“Fairfield Sentry”) and from Kingate Global Fund Ltd. (“Kingate Global”). ECF No. 1; and

**WHEREAS**, on August 6, 2019, the Court entered an Order Pursuant to Section 105(a) of the Bankruptcy Code and Rules 2002 and 9019 of the Federal Rules of Bankruptcy Procedure approving a settlement agreement (“Settlement Agreement”) by and among the Trustee and the Kingate Global and Kingate Euro Fund Ltd. (together, the “Kingate Funds”). *Picard v. Ceretti*, Adv. Pro. No. 09-01161 (CGM) (Bankr. S.D.N.Y. Aug. 6, 2019), ECF No. 417. The Settlement Agreement was a full and final settlement and satisfaction of the Trustee’s claims against the Kingate Funds. *Picard v. Ceretti*, Adv. Pro. No. 09-01161 (CGM) (Bankr. S.D.N.Y. July 17, 2019), ECF No. 413-2. The release granted by the Trustee in the Settlement Agreement extended to the Kingate Funds’ shareholders to the extent that any such shareholders, like Defendant Bank Hapoalim (Switzerland) Ltd., received transfers of money from the Kingate Funds, but the Settlement Agreement did not include a release of claims that the Trustee may bring that are unrelated to the Kingate Funds’ investments in or withdrawals from BLMIS. *Id.*;

**IT IS HEREBY STIPULATED AND AGREED:**

1. Pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure, as incorporated by Rule 7015 of the Federal Rules of Bankruptcy Procedure, the Trustee amends his Complaint to dismiss Count One, which sought to recover transfers that Bank Hapoalim (Switzerland) Ltd.

allegedly received from Kingate Global. Count One is hereby dismissed with prejudice, and no further action is needed by the Trustee or Defendants to effectuate this amendment.

2. Defendants shall respond to the Complaint by **April 6, 2022**. If Defendants file a motion to dismiss the Complaint, such motion shall set forth any and all grounds for dismissal at the pleading stage. The Trustee shall respond to the motion by **June 9, 2022**, and Defendants shall file their reply by **July 13, 2022**.

3. If any Defendants file such a motion to dismiss the complaint, the parties shall seek oral argument on the motion at the Court's first available convenience. The deadlines established by this Stipulation and Order are without prejudice to either party seeking future extensions of time.

4. The Trustee and Defendants reserve all rights, arguments, objections and defenses they may have, and entry into this Stipulation shall not impair or otherwise affect any such rights, arguments, objections, and defenses, including without limitation, challenges to personal jurisdiction or to the jurisdiction of this Court. In addition, based on preliminary information regarding the disposition of certain assets and liabilities, the Trustee reserves the right to substitute or add as defendants any successor entities that may be determined through discovery. Entry into this Stipulation shall not be construed as a concession by any party that any such discovery is necessary, proper, or authorized, nor shall it be construed as a waiver of any party's right to object to, challenge, or seek relief from the Court with respect to any such discovery.

5. This stipulation may be signed by the Trustee and Defendants in any number of counterparts, each of which when so signed shall be an original, but all of which shall together constitute one and the same instrument. A signed facsimile, photostatic, or electronic copy of this stipulation shall be deemed an original.

Dated: February 4, 2022  
New York, New York

By: /s/ David J. Sheehan

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Liquidation of Bernard L. Madoff Investment  
Securities LLC and the Chapter 7 Estate of  
Bernard L. Madoff*

**SO ORDERED.**

By: /s/ Scott Balber

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**Dated: February 7, 2022  
Poughkeepsie, New York**



/s/ Cecelia G. Morris

**Hon. Cecelia G. Morris  
Chief U.S. Bankruptcy Judge**